

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EDWARD DONALD BURLEY,

Plaintiff,

CASE NO. 1:15-CV-320

v.

HON. ROBERT J. JONKER

THOMAS COOLEY, *et al.*,

Defendants.

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**ORDER APPROVING AND ADOPTING  
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (docket # 30) and Plaintiff Burley's Objections (docket ## 33, 34). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that Magistrate Judge Kent's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law. The Magistrate Judge properly analyzed Mr. Burley's claims of deliberate indifference. Nothing in Plaintiff's objections changes the fundamental analysis. The record reflects that Defendants Fletcher and Heyns were not involved in Plaintiff's dental care and that Plaintiff ultimately received the dental care he sought. There is no basis to conclude that Defendant Anderson or Defendant Cooley knew of and disregarded an excessive risk to Plaintiff's health or safety, and so Plaintiff cannot satisfy the subjective component of deliberate indifference. The Court agrees with the Magistrate Judge's conclusion that Defendants are entitled to the relief they seek, for the very reasons the Report and Recommendation delineates.

**ACCORDINGLY, IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge (docket # 30) is approved and adopted as the opinion of the Court.

**IT IS FURTHER ORDERED** that Defendants Anderson, Cooley, and Heyns's Motion for Summary Judgment (docket # 13) is **GRANTED**.

**IT IS FURTHER ORDERED** that Defendant Fletcher's Motion for Summary Judgment (docket # 19) is **GRANTED**.

**IT IS FURTHER ORDERED** that for the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997).

This case is **DISMISSED**.

Dated: March 23, 2016

/s/ Robert J. Jonker  
ROBERT J. JONKER  
CHIEF UNITED STATES DISTRICT JUDGE